IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 67 of 2007
With
COMPANY PETITION No. 68 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ADANI RETAIL LIMITED. - Petitioner(s)
Versus
. - Respondent(s)

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Appearance :
NANAVATI ASSOCIATES for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/06/2007

ORAL JUDGMENT

Company Petition No. 67 of 2007 is filed by the Adani Retails Ltd. (demerged company) under sections 391 to 394 of the Companies Act (for short “the Act”) to sanction the proposed scheme of arrangement in the nature of demerger of retail operations business of Adani Retail Ltd. to Advantage Retail Pvt. Ltd. (resulting company).

Company Petition No. 68 of 2007 is filed by the petitioner Advantage Retail Pvt. Ltd. (resulting company) to sanction the proposed scheme of arrangement in the nature of demerger of retail operations business of demerged company to resulting company under sections 391 to 394 of the Act.

2. It is submitted that the demerged company is a company incorporated under the provisions of the Companies Act, 1956 and it is the closely held public limited company while the resulting company is the closely held private limited company. It is stated that both the companies are having identical and similar business object and are in same line of business. It is submitted that each of the retail operations business, and the cash and carry

business of the demerged company have tremendous growth and profitability potential and transfer of the retail operations business from the demerged company to the resulting company as contemplated by the proposed scheme of arrangement will enable the respective business to implement focused business strategies, receive better management and achieve greater growth targets. The advantages which will flow from the proposed scheme of arrangement of demerger is stated in detail in the petition.

3. Having procured and produced the written consent of the equity shareholders, secured and unsecured loan creditors of the demerged company, vide order dated 9-3-2007 passed in Company Application No.111/07, the meetings of the equity shareholders, secured and unsecured loan creditors of the demerged company were dispensed with. It is submitted that as one of the secured creditor ICICI Bank Ltd. was fully paid off , there was no requirement of the consent letters. Similarly having procured and produced the written consent of all the equity shareholders of the resulting company to the

proposed scheme of arrangement of demerger vide order dated 9-3-2007 passed in Company Application No.113 of 2007 passed by this Court, the meeting of the equity shareholders of the resulting company was dispensed with.

4. After the petitions were admitted, the same were advertised in local newspapers “Indian Express” (English daily) and “Gujarat Samachar” (Gujarati daily) both Ahmedabad editions on 30-3-2007 and the affidavits dated 11th June 2007 are filed submitting that the same have been duly advertised in the aforesaid local newspapers. Nobody has objected to the proposed scheme of demerger in spite of the public advertisement. Notices of the petitions were sent to the Regional Director, Department of Company Affairs (WR) and the publication in the Government Gazette was dispensed with. In response to the notice issued by this Court, an affidavit-in-reply is filed on behalf of the Central Government affirmed by Asst. Registrar of Companies, Ahmedabad dated 7-5-2007 along with the report/letter dated 3-5-2007 signed by Regional Director and it has been submitted that the following

observations are made;

(1)The petitioner may be directed to file the latest financial statement before the Hon'ble High Court at the time of hearing.

(2)The authorised capital of the resulting company is not sufficient to make the issue of new equity shares to the shareholders of the demerged company. Therefore, the resulting company may be directed to increase the authorized capital as per the provisions of section 94/97 r.w. Schedule X of the Act.

(3)There is no provision for reduction of capital of the demerged company and therefore the demerged company may be directed to comply with provisions of section 100-104 of the Act.

5. In response to the affidavit and the observations, an additional affidavit and/or affidavit to the clarification sought by the Regional Director, Mumbai is filed by the petitioner dated 9-5-2007. Dealing with observation No.1, it is submitted that along with company petitions, latest financial position of the company are annexed at Annexure B. However, as desired by the Regional Director, the latest

financial statement (balance sheet) dated 31-3-2007 is produced at Annexure I to the said affidavit. Thus, observation No.1 is complied with. So far as observation at para 2 is concerned, it is clarified in the reply that as and when the scheme is sanctioned, the issue of allotment shares would arise and necessary formalities shall be followed by the transferee company under the provisions of section 94/97 r.w. Schedule X of the Act and the question of allotment of shares would arise only after the scheme is sanctioned by this Court.

6. Shri KS Nanavati, learned senior advocate appearing on behalf of the petitioner has submitted that the scheme may be sanctioned subject to increasing the share capitals as per section 94/97 r.w. Schedule X of the Act and sanctioning the scheme may be conditional one. So far as the observation No.3 is concerned, it is clarified that pursuant to the scheme of arrangement in the nature of demerger, there is no reduction of capital of demerged company. Hence, there is no requirement to comply with the provisions of section 101-104 of the Act. Now considering the affidavit dated 9-5-2007, meeting with the

observations of the Regional Director, the observations of the Regional Director will not survive and there is no impediment in sanctioning the proposed scheme of demerger with an observation that the scheme would be sanctioned subject to increasing the share capital by the resulting company after following necessary provisions under sections section 94/97 r.w. Schedule X of the Act and/or other relevant provisions. As stated above, though in spite of the public advertisement, nobody has objected to the proposed scheme of demerger. On considering the proposed scheme and the averments in the petitions, this Court is also of the firm opinion that the proposed scheme of demerger would be in the larger public interest as well as i the interest of members and shareholders of the respective companies. The proposed scheme of demerger is also not against the public interest.

Hence, subject to increasing the share capital by the resulting company and comply with the provisions of section 94/97 r.w. Schedule X of the Act, prayers in terms of para 11 (1) both in Company Petition Nos.67 of 2007 and 68 of 2007 are hereby granted.

7. Both these petitions are disposed of accordingly. So far as the costs to be paid to the learned Central Government Standing Counsel is concerned, the same is quantified at Rs.3500/- per petition and the same may be paid to Shri Harin Raval, learned Assit. Solicitor General of India by the respective petitioners.

(M.R. Shah, J.)

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